



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2023-0090; FRL-11014-02-R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma, submitted to the EPA by the State of Oklahoma designee (“the State”) on January 30, 2023. The SIP revisions being approved address amendments to subchapters regarding Control of Emission of Volatile Organic Compounds (VOCs) and Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID EPA-R06-OAR-2023-0090. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6717, shahin.emad@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our June 13, 2023, proposal (88 FR 38433).¹ In that document we proposed to approve a portion of the revisions to the Oklahoma SIP submitted on January 30, 2023. Our June 2023 proposal addressed only the portion of the submittal that referred to the Oklahoma Administrative Code (OAC) Title 252, Chapter 100 (denoted OAC 252:100), Subchapters 37, and 39. The remainder of the submitted revisions were addressed in a separate rulemaking action.²

The revisions addressed in our June 2023 proposal add clarity and consistency to the Oklahoma SIP. The revisions do not relax the current SIP rules and are consistent with applicable Federal regulations. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. More detail on these revisions is provided in the docket for this action.

Our June 2023 proposal provided a detailed description of the revisions and the rationale for the EPA’s proposed actions, together with a discussion of the opportunity to comment. The public comment period for our June 2023 proposal was extended to August 14, 2023, to allow additional time for stakeholders to review and comment on the proposal.

We received comments from the Muscogee (Creek) Nation, the Chickasaw Nation, and two anonymous comments. One anonymous comment supported the

¹ Henceforth referred to as our “June 2023” proposal.

² The submitted revisions also address amendments to Subchapter 2, and Appendix Q, Incorporation by Reference, and Subchapter 8, Permits for Part 70 Sources and Major New Source Review (NSR) Sources, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality. More information about the EPA addressing these other sections may be found in the text of the June 2023 proposed action.

extension of the comment period and the other was supportive of this action generally.

Below are our responses to comments from the Muscogee (Creek) Nation and the Chickasaw Nation.

II. Response to Comments

Comment: During Tribal Consultation, the Muscogee (Creek) Nation asked for more information regarding the number of compressor station facilities within the Muscogee Reservation.

Response: Region 6 was able to obtain the number of natural gas compressor stations within the Muscogee (Creek) Nation Reservation from the ODEQ emission inventory database. There are 79 compressor stations in the counties that make up the reservation.

Comment: Commenter stated concern about the number of compressor stations (and therefore the amount of loading at relevant condensate tanks) on Muscogee (Creek) Reservation land, the amount of VOC's, and the effects that the VOC's may have on Muscogee citizens' health and the environment.

Response: EPA agrees that VOC emissions can be harmful to human health and the environment but notes that this action will not result in any increase in emissions of VOCs. EPA has found this revision complies with Clean Air Act Requirements. EPA is required to approve SIP revisions that comply with all applicable requirements.

This action merely clarifies ODEQ's long standing interpretation that the provisions of Subchapter 37 do not apply to loading operations at condensate tanks at compressor stations. As this is just a clarification, there is no change to how these facilities are regulated in practice and there is no increase in emissions of VOC's. This type of loading, however, remains regulated under separate provisions specific to compressor station operations.

A loading facility has the main purpose of loading/unloading VOC's in relatively large quantities using specialized equipment. Although condensate loading operations

occur at compressor stations, that is not its main purpose. The transfer of condensate and produced water from atmospheric storage tanks into individual tanker trucks at a compressor station is a different type of operation both in scale and in the equipment used than is the case in, for example, the bulk transfer of gasoline at a pipeline terminal/bulk gasoline distribution system. Condensate loading operations at compressor stations were not meant to be covered by 252:100-37-16 as they do not have the physical equipment (loading arm and pump) to conduct this type of loading and have much lower throughput and emissions. The loading of condensate from natural gas compressor station is regulated under other ODEQ rules such as 252:100-37-15(b) for submerged fill or a vapor recovery system which applies to most condensate tanks at compressor stations since a typical tank is about 400 barrels (16,800 gallons). Also, natural gas compressor stations are subject to federal New Source Performance Standards (NSPS) such as Subpart OOOO.

Comment: Commenter stated concern that incineration of petroleum solvents as in dry cleaning filters is not an acceptable process in Indian Country and that the incineration of petroleum solvents creates Hazardous Air Pollutants that cause health and environmental justice issues. The commenter also stated that the outdated compliance schedule should be replaced with an updated one.

Response: Based on its air quality inspections in Tulsa County, the ODEQ is not aware of any facilities that incinerate dry cleaning filters as referenced in this subchapter. In addition, the revision only clarifies that if a facility were to incinerate the filters, it can only be allowed if permitted by the appropriate regulatory entity. It is important to note that this section of the ODEQ rules does not set requirements that must be met to obtain a permit for incineration only that there be the appropriate permit which would be the case even if this provision was not included in the SIP. As such, the revision does not impact compliance with the Clean Air Act and therefore, EPA must approve the revision.

The revision also removes the outdated compliance schedule of October 1, 1986. There is no need to replace this schedule as there is not a grace period for facilities to get into compliance; existing facilities should be complying already, and new facilities would need to begin operations in compliance with this subchapter.

Comment: The commenter stated that there appears to be no environmental justice issue, but the Muscogee (Creek) Nation would like to see the EJ report and the reporting decision on the subject matter.

Response: Please see “EJ Considerations” document, Doc. ID 0005 in the docket for this action for review of Environmental Justice information related to this action.

Comment: In their comment, the Chickasaw Nation provides some background on SAFETEA and the *McGirt v. Oklahoma* litigation. This includes the most current status that while EPA proposed the withdrawal and reconsideration of the October 1, 2020, decision to grant Oklahoma authorization to administer EPA approved environmental programs in Indian Country, the October 2020 decision remains in effect until EPA takes final action. The Chickasaw Nation comments that the EPA's action on the Oklahoma SIP is premature and the agency should first resolve the issue of the withdrawal before proceeding with new regulatory actions under SAFETEA. The commenter recommends that no new actions that impact Indian country should be taken until a final decision is made on the October 2020 approval. The Chickasaw Nation also comments regarding the importance of EPA's federal trust obligations to Indian tribes including government-to-government consultations and asks that EPA be more proactive in its fulfillment of federal trust responsibilities.

Response: As stated in our June 2023 proposal, and by the commenter, the State retains its authority to administer authorized programs in certain areas of Indian country pursuant to the October 1, 2020, approval under SAFETEA while EPA undergoes its reconsideration of that decision. The State's authority includes the implementation the

SIP in areas of Indian country included in the October 2020 approval and in non-reservation areas of Indian country pursuant to *ODEQ v EPA*. As also noted in the June 2023 proposal, EPA may make further changes to this final approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval. EPA notes that the litigation involving the October 2020 decision is currently being held in abeyance pending the outcome of EPA's reconsideration. EPA takes seriously its general federal trust responsibility to tribes. By example, EPA has engaged with and offered consultation to all affected Oklahoma tribes on this matter. EPA intends to continue its engagement with tribes on relevant matters, including on actions related to approvals in Oklahoma and with regards to SAFETEA.

III. Final Action

We are approving portions of a SIP revision submitted to the EPA by the State of Oklahoma on January 30, 2023. Specifically, we are approving the revisions to OAC 252:100, Subchapters 37 (Control of Emission of Volatile Organic Compounds (VOCs), and 39 (Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas). We are approving these revisions in accordance with section 110 of the Act.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Oklahoma regulations as described in Section III of this preamble, Final Action. The revised regulations address VOC emissions. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have

been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

V. Impact on Areas of Indian Country

As stated in the proposed action, on October 1, 2020, the EPA approved Oklahoma's request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country pursuant to section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA").³

As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively "excluded Indian country lands"). In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).

As explained earlier in this action, the EPA is approving revisions to portions of the Oklahoma SIP that were submitted by the State of Oklahoma on January 24, 2023. More specifically, we are approving a revision providing clarification to OAC 252:100-

³A copy of EPA's October 1, 2020, approval can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Document ID No. XXXXX

37-16 of Subchapter 37, Control of Emission of Volatile Organic Compounds (VOCs) and amending language and correcting approval process for OAC 252:100-39-45 of Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality. Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with EPA's October 1, 2020, SAFETEA approval, these SIP revisions will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. Because – per the State's request under SAFETEA – EPA's October 1, 2020, SAFETEA approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.⁴

VI. Environmental Justice Considerations

As stated in our June 2023 proposal and posted in the docket for this action, EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma. EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not

⁴ In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and expects to engage in further discussions with tribal governments and the State of Oklahoma as part of this review. EPA notes that the SAFETEA approval is the subject of a pending challenge in Federal court. (*Pawnee v Regan*, No. 20-9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020, approval. Although EPA is approving these revisions before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

Hispanic or Latino)) is less than the national average (38.5 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is less than the national average (7.8 percent versus 13.6 percent) and the percent of the population that is American Indian/Alaska Native is greater than the national average (9.7 percent versus 1.3 percent). The percent of the population that is two or more races is greater than the national average (6.6 percent versus 2.9 percent). The percent of people living in poverty in Oklahoma is greater than the national average (15.6 percent versus 11.6 percent).

This final action approves new rules into the Oklahoma SIP that are anticipated to add clarification and consistency to the SIP and will generally be neutral or contribute to reduced environmental and health impacts on all populations in Oklahoma, including indigenous people, people of color, and low-income populations. There is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. EPA offered consultation on our proposed rulemaking to tribal governments that may be affected by this action.⁵ We received one request for tribal consultation from the Muscogee Nation and provided such on August 10, 2023.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal

⁵ See invitation for consultation, dated June 8, 2023, in the docket for this action.

requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated June 8, 2023) on our proposed rulemaking to tribal governments that may be affected by this action. We received a request for formal tribal consultation from the Muscogee Nation and provided consultation on August 10, 2023.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Oklahoma Department of Environmental Quality did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described earlier in the section titled, “Environmental Justice

Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of EO 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: December 19, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL – Oklahoma

2. In §52.1920, the table in paragraph (c) titled “EPA Approved Oklahoma Regulations” is amended by revising entries for 252:100-37-16 and 252:100-39-45 to read as follows:

§52.1920 Identification of plan

* * * * *

(c) * * *

EPA Approved Oklahoma Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
* * * * *				
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOC)				
* * * * *				
PART 5. Control of VOCs in Coating Operations				
* * * * *				
252:100-37-16	Loading of VOCs	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
* * * * *				
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas				

* * * * *				
PART 7. Specific Operations				
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252:100-39-45	Petroleum (solvent) dry cleaning	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
* * * * *				

[FR Doc. 2023-28496 Filed: 12/27/2023 8:45 am; Publication Date: 12/28/2023]